

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
Fleming Companies, Inc., et al.)	Case No. 03-10945 (MFW)
)	(Jointly Administered)
Debtors.)	
)	

**FOOD MARKETING GROUP, INC.'S STATEMENT OF ISSUES
ON APPEAL AND DESIGNATION OF THE RECORD ON APPEAL**

Food Marketing Group, Inc. ("FMG") submits this statement of issues on appeal and designation of items to be included in the record on appeal:

1. On October 20, 2005, the Bankruptcy Court entered an Order on Cross-Motion of the Post-Confirmation Trust for Declaratory Relief [Docket No. 11930] (the "Order").
2. On October 31, 2005, FMG filed a Notice of Appeal from the Order pursuant to Rules 8001 and 8002 of the Federal Rules of Bankruptcy Procedure.

Statement of Issues on Appeal

3. Pursuant to Bankruptcy Rule 8006, FMG states the following issues to be presented on appeal of the Order:

- (a) Did the Bankruptcy Court err in ruling as a matter of law, based on the plain language of the Plan, that claims brought by the PCT against Peter Frank, are not "indirect" or "otherwise" claims against FMG?
- (b) Did the Bankruptcy Court err in ruling as a matter of law, based on the plain language of the Plan, that claims of the Debtors against FMG are property of the PCT, and not the RCT?

Designation of Items To Be Included in the Record on Appeal

4. FMG hereby designates the following items to be included in the record for this appeal:

A. Motion of the Reclamation Creditors' Trust to (i) Enforce the Reorganization Plan and Confirmation Order, (ii) Enjoin the Post-Confirmation Trust from Pursuing Claims Against Employees of Reclamation Creditors to Recover RCT Assets from Their Reclamation Creditor Employers, and (iii) Determine that the PCT's Claims Against Employees of Reclamation Creditors Constitute RCT Assets, with accompanying exhibits:

- (a) Disclosure Statement to Debtors' and Official Committee of Unsecured Creditors' Third Amended and Revised Joint Plan of Reorganization of Fleming Companies, Inc. and Its Filing Subsidiaries Under Chapter 11 of the United States Bankruptcy Code, pp. 29–31;
- (b) In re Fleming Companies Securities Litigation, Cross-Complaint and Original Complaint of the Post-Confirmation Trust and Original Answer of Defendants The Fleming Companies, the Post-Confirmation Trust and Core-Mark, Civ. Action No. 05-03-1530 (TJW), Case No. MDL-1530 (E.D. Tex.);
- (c) Revised Term Sheet to Resolve Objections to Debtors' Chapter 11 Plan and for Treatment of Reclamation Claims;
- (d) SEC Press Release: Grocery Wholesaler Fleming Companies Settles Fraud Charges with SEC, Dated September 14, 2004.

Date: August 25, 2005

Docket No.: 11559

B. Response of Kemps LLC in Support of Motion of the Reclamation Creditors' Trust to (i) Enforce the Reorganization Plan and Confirmation Order, (ii) Enjoin the Post-Confirmation Trust from Pursuing Claims Against Employees of Reclamation Creditors to Recover RCT Assets from Their Reclamation Creditor Employers, and (iii) Determine that the PCT's Claims Against Employees of Reclamation Creditors Constitute RCT Assets.

Date: October 4, 2005

Docket No.: 11818

C. Order Confirming Chapter 11 Plan of Reorganization – Debtors’ and Official Committee of Unsecured Creditors’ Third Amended and Revised Joint Plan of Reorganization of Fleming Companies, Inc. and Its Filing Subsidiaries Under Chapter 11 of the United States Bankruptcy Code with exhibit A thereto:

- (a) Debtors’ and Official Committee of Unsecured Creditors Third Amended and Revised Joint Plan of Reorganization of Fleming Companies, Inc. and Its Filing Subsidiaries Under Chapter 11 of the United States Bankruptcy Code..

Date: July 26, 2004

Docket No.: 9045

D. Disclosure Statement – Third Amended and Revised Disclosure Statement in Support of Debtors’ and Official Committee of Unsecured Creditors’ Third Amended and Revised Joint Plan of Reorganization of Fleming Companies, Inc., and Its Filing Subsidiaries Under Chapter 11 of the United States Bankruptcy Code, with exhibits:

- (a) Exhibit 9 Post Confirmation Trust Agreement
- (b) Exhibit 12 Reclamation Creditors’ Trust Agreement

Date: May 28, 2004

Docket No.: 8269

E. Kraft Food Global Inc.’s Response in Opposition to the Post-Confirmation Trust’s Motion for Declaratory Judgment and Joinder in the Reclamation Trust’s Motion to Enforce

Date: October 12, 2005

Docket No.: 11865

F. Response of Reclamation Creditors Trust to the Cross-Motion of the Post Confirmation Trust for Declaratory Relief, with accompanying exhibits:

- (a) SEC v. Shapiro, Civil Action No. 4:05cv364, Complaint filed Sept. 15, 2005 (E.D. Tex.);
- (b) December 10, 2004 e-mail from PCT special counsel, Kathy D. Patrick, to Mark Friedman;
- (c) December 21, 2004 letter from Mark J. Friedman to Robert A. Kors;

(d) March 24, 2005 e-mail from Mark J. Friedman to Robert A. Kors

Date: October 12, 2005

Docket No.: 11866

G. Amended Response of the Post-Confirmation Trust to Claim Ownership Motion of Reclamation Creditors Trust and Cross-Motion of the Post-Confirmation Trust for Declaratory Relief, and accompanying exhibits:

- (a) Debtors' and Official Committee of Unsecured Creditors' Third Amended and Revised Joint Plan of Reorganization of Fleming Companies, Inc. and Its Filing Subsidiaries Under Chapter 11 of the United States Bankruptcy Code;
- (b) First RCT Status Report and Notice of Payment of Class 3(B) TLV Reclamation Claims;
- (c) In the Matter of Fleming Companies, Inc., Order Instituting Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing a Cease-and-Desist Order, Securities Act Release No. 8482;
- (d) In the Matter of Bruce Keith Jensen, Order Instituting Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing a Cease-and-Desist Order, Securities Act Release No. 8487;
- (e) In the Matter of John K. Adams, Order Instituting Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing a Cease-and-Desist Order, Securities Act Release No. 8484;
- (f) In the Matter of Dean Foods Company and John D. Robinson, Order Instituting Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing a Cease-and-Desist Order, Securities Act Release No. 8486;
- (g) In the Matter of Digital Exchange Systems, Inc., Rosario Coniglio and Steven Schmidt, Order Instituting Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing a Cease-and-Desist Order, Securities Act Release No. 8483;

- (h) In the Matter of Kemps LLC, f/k/a Marigold Foods, LLC, James Green and Christopher Thorpe, Order Instituting Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing a Cease-and-Desist Order, Securities Act Release No. 8485;
- (i) Fleming Companies, Inc. et al., Reclamation Claim Summary by Claimant, November 21, 2003;
- (j) Press Release: Enron Reaches Settlement with JPMorgan Chase in Megaclaims Litigation Valued at \$1 Billion, dated August 16, 2005;
- (k) Press Release: Enron Reaches Settlement with Canadian Imperial Bank of Commerce in Megaclaims Litigation, dated August 5, 2005;
- (l) Press Release: Enron Reaches Settlement with Toronto-Dominion Bank in Megaclaims Litigation, dated August 16, 2005;
- (m) Press Release: Enron Reaches Settlement with Royal Bank of Scotland in Megaclaims Litigation, dated July 17, 2005;
- (n) Press Release: Enron Reaches Settlement with Royal Bank of Canada in Megaclaims Litigation, dated July 28, 2005;
- (o) Enrico Bondi v. Bank of America Corp. (In re Parmalat Secs. Litig.), Master Docket 04-MD-1653 (LAK), 05-CIV-4015 (LAK), Memorandum Opinion (S.D.N.Y. Aug. 5, 2005).

Date: October 13, 2005

Docket No.: 11889

H. Food Marketing Group, Inc.'s (A) Joinder to Motion of the Reclamation Creditors' Trust to (i) Enforce the Reorganization Plan and Confirmation Order, (ii) Enjoin the Post-Confirmation Trust from Pursuing Claims Against Employees of Reclamation Creditors to Recover RCT Assets from the Reclamation Creditor Employers, and (iii) Determine that the PCT's Claims Against Employees of Reclamation Creditors Constitute RCT Assets and (B) Response to PCT Cross-Motion.

Date: October 12, 2005

Docket No.: 11862

I. Response of Kemps LLC in Opposition to the Cross-Motion of the Post Confirmation Trust for Declaratory Relief, and accompanying exhibit:

(a) Kemps Limited Liability Company Agreement, § 17.1(a) & (d)

Date: October 12, 2005

Docket No.: 11864

J. Dean Food Company's (I) Joinder in Motion of the Reclamation Creditors' Trust to Enforce the Reorganization Plan and Confirmation Order and (II) Response in Opposition to Cross-Motion of the Post-Confirmation Trust for Declaratory Relief

Date: October 12, 2005

Docket No.: 11867

K. Motion of the Post Confirmation Trust for Leave to File Consolidated Reply Brief in Response to Six Additional Briefs Filed in Support of RCT Motion to Enjoin the Post Confirmation Trust from Pursuing Claims and in Response to the PCT's Cross-Motion

Date: October 17, 2005

Docket No.: 11910

L. Order on Cross-Motion of the Post-Confirmation Trust for Declaratory Relief

Date: October 19, 2005

Docket No.: 11930

M. Transcript of Hearing held on October 19, 2005 before the Honorable Mary F. Walrath

Date: October 26, 2005

Docket No.: 11992

N. Notice of Appeal by Food Marketing Group, Inc.

Date: October 31, 2005

Docket No.: 12007

On October 31, 2005, Kraft Food Global, Inc. filed of a notice of appeal of the same Order that is the subject of FMG's appeal. Kraft Food Global, Inc. has submitted to the Court substantially all of the documents that FMG has designated herein as part of the record on appeal. At the request of the Bankruptcy Court, unless necessary, FMG will not submit duplicate copies of the same documents submitted by Kraft Food Global, Inc., and is submitting only FMG's Notice of Appeal. All other documents designated herein may be found in the Designation of the Record on Appeal submitted by Kraft Food Global, Inc.

Dated: November 10, 2005

COZEN O'CONNOR

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**IN THE UNITED STATES BANKRUPTCY COURT
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In re:)	Chapter 11
)	
Fleming Companies, Inc., <i>et al.</i> ,)	Case No. 03-10945 (MFW)
)	
Debtors.)	(Jointly Administered)

CERTIFICATE OF SERVICE

I, Jeffrey R. Waxman, do hereby certify that on this 10th day of November 2005, I caused a true and correct copy of *Food Marketing Group, Inc.'s Statement of Issues on Appeal and Designation of the Record on Appeal* to be served upon the following parties via the manners indicated:

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Under penalty of perjury, I certify that the foregoing is true and correct.

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